

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

GETTY PETROLEUM MARKETING INC.,	:	
Plaintiff,	:	CIVIL ACTION NO. 2:10-cv-01484
	:	
vs.	:	
	:	Honorable Judge Joseph F. Bianco
R.D. CLARK & SONS, INC.,	:	Hon. Mag. Jud. A. Kathleen Tomlinson
ROBERT D. CLARK,	:	
JAMES P. CLARK, and	:	
JOHN D. CLARK	:	DEFENDANTS' NOTICE OF MOTION
Defendants,	:	TO AMEND DEFENDANTS' THEIR
	:	ANSWER TO INCLUDE THE AFFIRMATIVE
R.D. CLARK & SONS, INC.	:	DEFENSE OF THE STATUTE OF FRAUDS
Third-Party Plaintiff,	:	
	:	
vs.	:	
	:	
GREEN VALLEY OIL, LLC, and	:	
PAUL J. STENDARDI,	:	
Third-Party Defendants.	:	

PLEASE TAKE NOTICE that pursuant to Fed.R. Civ.P. 8(c)(1), 15(a), and Case Docket Text entry dated October 5, 2010, defendants R.D. Clark and Sons, Inc., ("RDC"), Robert D. Clark, James P. Clark and John D. Clark will move before the Honorable Judge Joseph F. Bianco of this court located at 100 Federal Plaza, Central Islip, New York 11722 on January 4, 2011, at 11:00 a.m., or any adjournment thereof, for an Order allowing defendants to amend their answer to plaintiff's complaint to include the affirmative defense of the Statute of Frauds.

Defendants will rely upon:

- Plaintiff's complaint, filed on 04/02/10 as Document 1;
- Defendants' original answer, filed on 04/13/10 as Document 3; same answer filed on 05/14/10 as Document 13;
- Affidavit of Paul J. Stendardi dated August 18, 2010, filed on 08/18/10 as Document 38;
- Affidavit of Paul J. Stendardi dated October 12, 2010, filed on 10/12/10 as Document 39;

- Exhibit D filed by Plaintiff in support of its Motion for Summary Judgment on 08/18/10 as Document 38-4;
- Exhibit 2 filed by Plaintiff in reply to defendants' opposition to plaintiff's Motion for Summary Judgment on 10/12/10 as Document 49-2;
- Plaintiff's Reply Memorandum of Law in Further Support of Its Motion for Summary Judgment, filed on 10/12/10 as Document 48;
- Plaintiff's letter dated October 4, 2010, to the court, filed October 4, 2010 as Document 45;
- Affidavit of Carolyn Viveiros dated September 23, 2010, in opposition to plaintiff's motion for summary judgment, and Exhibits D-1 through D-17 annexed thereto;
- Affidavit of Carolyn Viveiros dated October 22, 2010, in support of this motion for leave to amend defendants' answer, and Exhibits D-18 through D-20 annexed thereto; and;
- Defendants' Memorandum in Opposition to Getty's Motion for Summary Judgment, filed on September 28, 2009, as Document 42;
- Defendants' memorandum of law in support of this motion to amend their answer.

A copy of the proposed amended answer is being filed simultaneously.

Dated: October 25, 2010

Thomas N. Ganiaris

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Attorney for Defendants and Third-Party Plaintiff

Certification of Service

I, Thomas N. Ganiaris, attorney for defendants R.D. Clark & Sons, Inc., Robert D. Clark, James P. Clark, and John D. Clark and for third-party plaintiff Robert D. Clark, hereby certify that on October 25, 2010, a copy of this Notice of Motion along with all accompanying and supporting documents were filed electronically with a courtesy copy being mailed by prepaid U.S. Mail to Honorable Judge Joseph F. Bianco. Notice of the filing will be sent by operation of the court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the court's system.

Dated: October 25, 2010

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